## IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

## **CHARLESTON DIVISION**

BRIAN C. MORGAN,	)	
	)	
Petitioner,	)	
	)	
v.	)	<b>CIVIL ACTION NO. 2:13-20212</b>
	)	
DAVID BALLARD, Warden,	)	
	)	
Respondent.	)	

## SUPPLEMENTAL PROPOSED FINDINGS AND RECOMMENDATION

This Supplemental Proposed Findings and Recommendation is filed to make the additional recommendation that Petitioner's Motion for Summary Judgment (Document No. 24.), be denied. In Petitioner's Response filed on February 19, 2014, Petitioner further requested that the "Court grant him summary judgment and grant him relief for 28 U.S.C. 2254." (Document 24, p. 1.) By Proposed Findings and Recommendation filed on August 12, 2014, the undersigned recommended that Respondent's Motion for Summary Judgment be granted and Petitioner's Section 2254 Petition be dismissed. (Document No. 34.) The undesigned adopts by reference his Analysis and Findings and Recommendation as set forth in his Proposed Findings and Recommendation filed on August 12, 2014. In preparing his Proposed Findings and Recommendation, the undersigned thoroughly considered all arguments set forth in Document No. 24. Accordingly, the undersigned respectfully recommends that the District court deny Petitioner's Motion for Summary Judgment (Document No. 24.).

The undersigned therefore hereby respectfully **PROPOSES** that the District Court confirm and accept the foregoing findings and **RECOMMENDS** that the District Court **DENY** Petitioner's Motion for Summary Judgment (Document No. 24.), **DISMISS** Petitioner's Petition Under 28

U.S.C. § 2254 for Writ of *Habeas Corpus* By a Person in State Custody (Document No. 2.), and

remove this matter from the Court's docket.

The parties are notified that this Supplemental Proposed Findings and Recommendation is

hereby **FILED**, and a copy will be submitted to the Honorable United States District Judge Thomas

E. Johnston. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and

Rule 45(e) of the Federal Rules of Criminal Procedure, the parties shall have seventeen days

(fourteen days, filing of objections and three days, mailing/service) from the date of filing of this

Proposed Findings and Recommendation within which to file with the Clerk of this Court, written

objections, identifying the portions of the Supplemental Proposed Findings and Recommendation

to which objection is made, and the basis of such objection. Extension of this time period may be

granted for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo

review by the District Court and a waiver of appellate review by the Circuit Court of Appeals.

Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985); Wright

v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

Copies of such objections shall be served on opposing parties, District Judge Johnston, and this

Magistrate Judge.

The Clerk is directed to file this Supplemental Proposed Findings and Recommendation, mail

a copy of the same to Petitioner and transmit a copy to counsel of record.

Date: August 13, 2014.

R. Clarke VanDervort

United States Magistrate Judge

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